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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/603,018

06/24/2003

Joel K. Zupancic

1199 P 186

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07/20/2006

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/603,018	ZUPANCIC ET AL.	
	Examiner	Art Unit	
	Stephen Gravini	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 21-25 and 27-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 21-25 27-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 21-23 and 25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Killpatrick et al. (US 5,489,981).

Claims 28-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kuroda et al. (US 5,852,881).

Claim 38 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by York et al. (US 5,828,178).

Claim Rejections - 35 USC § 103

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killpatrick in view of York. Killpatrick is considered to disclose the claimed invention, as rejected above, except for the claimed at least one of a plurality of lamps. York, another method for controlling a device, is considered to disclose at least one of a plurality of lamps at column 3 lines 33-63. It would have been obvious to one skilled in the art to combine the teachings of Killpatrick with at least one of a plurality of lamps, considered disclosed by York for the purpose of increasing the safety of an operator and conserving the bulb life of lamps by inadvertently starting.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Killpatrick in view of Dulay et al. (US 5,117,562). Killpatrick is considered to disclose the claimed invention, as rejected above, except for the claimed at least one of a

Art Unit: 3749

plurality of lamps. Dulay, another method for controlling a device, is considered to disclose at least one of a plurality of lamps at column 8 lines 4-66. It would have been obvious to one skilled in the art to combine the teachings of Killpatrick with at least one of a plurality of lamps, considered disclosed by Dulay for the purpose of increasing the safety of an operator and conserving the bulb life of lamps by inadvertently starting.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuroda in view of Dulay. Kuroda is considered to disclose the claimed invention, as rejected above, except for the claimed at least one of a plurality of lamps. Dulay, another system for controlling a device, is considered to disclose at least one of a plurality of lamps at column 8 lines 4-66. It would have been obvious to one skilled in the art to combine the teachings of Kuroda with at least one of a plurality of lamps, considered disclosed by Dulay for the purpose of increasing the safety of an operator and conserving the bulb life of lamps by inadvertently starting.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lueckenbach (US 6,751,888) in view of Dulay. Lueckenbach is considered to disclose the claimed invention comprising:

a power intensity selector **102** for selecting a power intensity value;

a time cycle selector **70** for selecting a duration value wherein the disclosed selector knob is considered to expressly disclose the claimed time cycle selector at column 3 line 40 because both allow time cycle selection;

a temperature selector **102** for selecting a temperature value wherein the disclose controller is considered to inherently anticipate the claimed temperature

Art Unit: 3749

selector since that device controls heating elements at column 3 line 60 such that heating element control directly correlates to temperature selection;

a base resolution selector **124** for selecting a base resolution wherein the disclosed thermostat is considered to inherently disclose the claimed base resolution selector because both provide a base resolution for a particular desired value;

a selector **104** for selecting the power intensity output signal; and

an application module **100** configured to initiate a counter;

increment the counter by the power intensity value as disclosed in column 4 line 57 through column 5 line 20;

determine whether the counter is greater than the base resolution as disclosed in column 6 lines 10-27;

upon a determination that the counter is greater than the base resolution, generate a power intensity output signal and decrementing the counter by the base resolution as disclosed in column 6 lines 10-55;

otherwise, increment the counter by the power intensity value as disclosed in column 7 lines 1-27;

sense the temperature of an element of the system as disclosed in column 4 lines 7-20;

determine whether the temperature of the element of the system has exceeded the temperature value as disclosed in column 5 lines 21-39;

upon a determination that the temperature of the element of the system has exceeded the temperature value, generate a system shutdown signal as disclosed in column 6 line 47 through column 7 line 7; and

upon a determination that the counter has exceeded the duration value, generate a system shutdown signal as disclosed in column 6 line 4 through column 7 line 43.

Lueckenbach is considered to disclose the claimed invention except for the claimed at least one of a plurality of lamps. Dulay, another method and/or system for controlling a device, is considered to disclose at least one of a plurality of lamps at column 8 lines 4-66. It would have been obvious to one skilled in the art to combine the teachings of Lueckenbach with at least one of a plurality of lamps, considered disclosed by Dulay for the purpose of increasing the safety of an operator and conserving the bulb life of lamps by inadvertently starting.

Response to Arguments

Applicant's arguments with respect to claims 21-37 have been considered but are moot-in-part based on new grounds of rejection.

anticipation

Amended claims 21 along with new claim 38 recite a different scope of the invention such that those claims are rejected under new prior art references above.

Current Office practice permits a prior art reference to clearly anticipate a claimed invention when the face of that reference teaches each of the claimed elements. Current Office policy also constrains examination to broadly and reasonably construe claims in light of the specification. In this application, applicants assert that the

Art Unit: 3749

features of incrementing a counter by power intensity value and comparing the counter to a base resolution is not seen from primary reference Kuroda. Applicants acknowledge that Kuroda discloses a counter incremented for motor rotation and power intensity selected. It should be recognized to those skilled in the art motor rotation is caused by power applied to that motor. Different intensity selection would cause the motor to rotate at different values for counted increments.

The comparison step argument is not found persuasive because that step is not claimed. Applicants' claimed determining and basis is considered patentably distinct from the argued comparison step because value is determined and a power signal is generated based on the determined value. Applicants acknowledge that Kuroda discloses a counter compared to a number of motor rotations. This number can be reasonably and broadly construed as the argued base resolution since both are a base to which can be compared. Since the rejection is considered to be proper, dependent claims 29-35 are also considered to be properly rejected.

obviousness

Applicants argue that because the anticipatory rejections should be withdrawn, so should the obviousness rejection. Also it is argued that secondary reference Dulay does not teach every element of the claimed invention. Dulay was not cited to teach every element, but rather to show that one skilled in the art would have been motivated to apply the teachings of primary reference Kuroda with secondary reference Dulay as discussed in the rejection above. The anticipatory rejections are considered proper and therefore maintained along with the obviousness rejections.

It is argued that the secondary rejection should be withdrawn because it is not seen that Lueckenbach discloses claimed or argued features.

First, the argued step to "increment the counter by the power intensity value" can be broadly and reasonably construed such that Lueckenbach discloses this feature as a thermostatic algorithm heater activation/deactivation as discussed in the rejection above because heater power is incremented in counted steps based on sensed temperature. As applicants recognize in their arguments, Lueckenbach counts the number of times a heater is activated based on incremental heat or power settings to prevent overcompensation. Therefore, the argued counter increment feature is believed disclosed as discussed in the rejection above.

Second, the argued comparing the counter to the base resolution is not claimed. Applicants claim recites "determine whether the counter is greater than the base resolution" which is disclosed as discussed in the rejection above. Comparing and determining are considered patentably distinct, based on the specification discussion of

the claimed determining feature from applicants' published specification US 2004/0261287 paragraphs [0017] and [0027], wherein a power signal is determined by a base resolution amount from a power intensity selector. It is reasonably and broadly construed that determination is merely a selection and not a comparison as argued. Therefore since the argued comparison is not claimed, the rejection under Lueckenbach is believed proper under current Office practice.

Third, applicants again assert the argued "generating a power intensity output signal based on the comparison of the counter to the base resolution" is not found in Lueckenbach. Again the comparison feature is not claimed and cannot be considered patentably interchangeable with the claimed determination feature as discussed above. The rejection under Lueckenbach is believed proper.

Applicants argue that secondary reference Dulay does not teach every element of the claimed invention. Dulay was not cited to teach every element, but rather to show that one skilled in the art would have been motivated to apply the teachings of primary reference Lueckenbach with secondary reference Dulay, more specifically the plurality of lamps, as discussed in the rejection above. The obviousness rejection is considered proper and therefore.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMG

July 11, 2006

A handwritten signature in cursive script, appearing to read "Stephen Gami".